IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 838 of 2003.

Reserved on: 12.11.2007.

Decided on: 3.12.2007.

Rajinder Singh & Others.	**…**	**…**	**Petitioners.**
Versus			
The State of H.P. & Others.	**…**	**…**	**Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioners:	**Mr. B.P. Sharma, Sr. Advocate with Mr. Sandeep Vashisht, Advocate.**
For Respondents No.1 & 2:	**Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For Respondent No.3:	**Mr. Rakesh Jaswal, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that Jhalta Forest Beat of Jubbal Forest Division was due for felling under 10 years felling programme in the year 1999-2000. The petitioners applied through Divisional Manager, Sawra for the issuance of marking and demarcation order. The competent authority had carried out the marking and demarcation and consequently, the felling orders were issued in favour of the

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Whether reporters of local papers may be allowed to see the judgment? yes.

petitioners vide order dated 28.3.2000. The possession of the trees was taken over by the respondent No.3 on 21.6.2000. The petitioners had entered into an agreement with respondent No.3-Corporation on 5.11.2001. The State had issued three notifications dated 24th November, 1999, 6th February, 2001 and 29.5.2001. In the agreement dated 5.11.2001 the reference has been made to the notification dated 6th February, 2001 which admittedly stood superseded on 29th May, 2001. There could not be any reference to the notification dated 6th February, 2001 which admittedly was superseded at the time of the execution of the agreement dated 5.11.2001. The petitioners had approached this Court by way of CWP No.984 of 2001. The writ petition was disposed of by this Court on 22.11.2002. The operative portion of the judgment reads thus:-

> **"In the facts and circumstances on record, no order is required to be passed in this writ petition save and except that the present writ petition will be treated as representation and it will be decided by Secretary (Forest) to the Government of H.P., Shimla on or before 31.1.2003 after hearing the petitioner or his representative/ Advocate. The parties will be free to raise all their contentions before the Secretary (Forest) to the Government of H.P. If the decision goes against the petitioner, he will be at liberty to have legal recourse in accordance with law. Petitioner is also at liberty to assail the legality and validity of the notifications issued from time to time in respect of price fixation of the forest produce."**

Consequently, the respondent No.1, i.e. the Principal Secretary (Forrest) to the Government of Himachal Pradesh rejected the contentions raised by the petitioners before him. Feeling aggrieved by the order dated 27.3.2003, the petitioners had filed

review petition before the Secretary (Forest) which remained un-decided.

Mr. B.P. Sharma, learned Senior Advocate with Mr. Sandeep Vashisht, Advocate had strenuously argued that the petitioners in the absence of valid notification as per the provisions of the H.P. Forest Produce (Regulation of Trade) Act, 1982 (hereinafter referred to as the Act for convenience sake) are entitled to get the price for their produce as per the economic system, i.e. " sale price linked system". The learned Advocate General and Mr. Jaswal had submitted that once the petitioners had entered into an agreement with respondent No.3-Corporation on 5.11.2001, they are precluded from challenging the price which had already been paid to them.

I have heard the learned counsel for the parties and have also gone through the record carefully.

The Legislative Assembly of Himachal Pradesh has enacted an Act called the "Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 (hereinafter referred to as the Act for convenience sake) to make the provision for regulating in the public interest the trade of certain forest produce by creation of full State control in such trade.

It is evident from the preamble of the Forest Produce (Regulation of Trade) Act, 1982 that the same has been made for regulating in public interest the trade of certain forest produce by creation of full State control in such trade. Sub-section (1) of section 2 defines the expression "agent", "committee", forest produce", "owner", "purchase" and "sale". Section 3 postulates that the State Government may for the purchase of, and trade, forest produce on its behalf, appoint one or more agents in respect of different divisions or all or any specified forest produce on such terms and conditions as

may be laid by the Government from time to time. Section 4 imposes restrictions on sale, purchase and transportation on the commencement of Act i.e. 1st October, 1981. It is stipulated in section 4 that no owner of forest produce shall effect sale of any forest produce to a person other than the State Government or agent appointed under section 3 and no person other than the State Government through its officer or agent appointed under section 3 shall purchase forest produce from any owner. The State Government has to purchase all forest produce offered for sale. The agent appointed under section 3 has to purchase the forest produce as per the programme as may be formulated under the H.P. Land Preservation Act, 1978 at the price fixed under section 7. Sections 6, 7 and 8 read thus:

> **"6. Constitution of Advisory Committee. –** (1) The State Government shall from time to time constitute for each division in which forest produce is grown or found an Advisory Committee which shall consist of not more than 5 members nominated by the State Government.
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> (2) The Advisory Committee for each such division shall from State Government in the matter of fixation from time to time of a fair and reasonable price at which forest produce offered for sale may be purchased by or on behalf of the State Government in that division and also on such other matter as may be referred to it by the State Government.
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> (3) The business of the Committee shall be conducted in such manner as may be prescribed.
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> **7. Government to fix price in consultation with the Committee. –** The State Government shall after consultation with the Committee constituted under section 6, fix the price at which forest produce shall be purchased at various places by it or by any of its authorised officer or agent from the owner of the forest produce and shall publish the same in the Official

Gazette or in such other manner as may be prescribed. The price so fixed shall remain in force upto the end of each financial year and shall not be altered during that financial year:

Provided that if the Committee fails to tender advice by the 15th of February preceding the financial year, the State Government may proceed to fix the price without consultation of the Committee.

Provided further that the State Government through its authorised officer or agent may purchase the forest produce till the constitution of the Committee at a price mutually agreed upon between the parties to the sale.

8. State Govt. agent to purchase for forest produce as per programme. – (1) The authorised officer or an agent shall purchase from the owner the forest produce offered for sale according to the felling programme, as may be formulated under the H.P. Land Preservation Act, 1978 (28 of 1978) at the price fixed under section 7.

(2). The State Government through its authorised officer or the agent may make such advances of money on such terms and conditions as may be prescribed to the owner whose forest produce is covered by the felling programme under the Himachal Pradesh Land Preservation Act, 1978 (28 of 1978)."

The State has framed the Rules called "the Himachal Pradesh Forest Produce (Regulation of Trade) Rules, 1982" prescribing the procedure for purchase of forest produce offered for sale by owners as well as procedure for constitution and conducting the business of the committee constituted under section 6 and the fixation of price by the State Government under section 7. Rules 4, 5 and 6 read thus:

"4. Procedure for purchase of forest produce offered for sale by owners (Section 5).- (1) The owner shall apply in Form No.II in duplicate to the Agent offering for sale the forest produce enclosing all documents in proof of this being owner of the forest produce and specifying the year during which the area from which forest produce is intended to be extracted and sold is due for felling under the felling programme.

(2) The Agent on receipt of application, shall forward the original to the Divisional Forest Officer concerned with a simultaneous reference to the Tehsildar and in the case of Sub-Tehsil to the Naib Tehsildar of the area concerned for demarcation of the area in which the forest produce is intended to be sold by the owner and offered for sale to the Agent. A copy of the request made to the Tehsildar/Naib Tehsildar will also be endorsed to the owner with directions to get the area demarcated.

(3) The demarcation of the area from which the forest produce is intended to be extracted and sold will be carried out by the Revenue Officer not below the rank of Naib Tehsildar in the presence of Range officer of the area concerned and nominee of the Agent:

Provided that where Naib Tehsildars are not posted, the demarcation of the area will be carried out by the Field Kanungos.

(4) It will be the responsibility of the owner or his legally authorized representative to get the area demarcated expeditiously to enable the Agent to fell and convert the trees within time.

(5) The trees will be marked silviculturally by the Range Officer/the Deputy Ranger/the Forester as per instructions issued by the Divisional Forest Officer, concerned from time to time.

(6) The marketing list duly signed by marking Officer, the Revenue Officer, giving the demarcation and

the nominee of the Agent will be submitted by Marking Officer through Range Officer, where he himself is not the Marking Officer, to the concerned Divisional Forest Officer along with following certificates:-

(a) that the demarcation has been carried out by a Revenue Officer not below the rank of a Naib Tehsildar (or Field Kanujngo, where the Naib Tehsildar is not posted) and that the marking has been carried out by the Forest Ranger/the Deputy Ranger/the Forester of the Forest Department and in presence of nominee of the Agent and that the correctness of the demarcation/marking to their entire satisfaction has been duly recorded on the marking lists;

(b) that the trees have been marked silviculturally as per rules/instructions on the subject;

(c) that no trees have been enumerated/marked from the Government forests;

(d) that the trees have been marked after having scrutinized all relevant revenue records, applications and affidavits of the land owners and after following the prescribed procedure for demarcation/marking;

(e) that the area from where these trees have been marked for sale are due for felling during……..as per approved 10 years felling programme of the…….Division;

(f) that the trees for which the sanction has been sought for are standing in privately owned malkiyati areas of the applicant landowners and no trees have been marked from the surplus area under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 or areas vested with Government under the provisions of the Himachal Pradesh Village Common Land (Vesting and Utilization) Act, 1974.

(7) The Divisional Forest Officer on receipt of marking list demarcation and marketing certificates may,

if he deems fit to do so, inspect the area and the marking for verification.

(8) On satisfaction of the Divisional Forest Officer he may issue the felling order in the name of the owners in Forum No.III with copies to the Range Officer concerned and the nominee of the Agent.

(9) The price of trees offered for sale will be paid by the Agent as per price fixed under section 7 of the Act.

5. Constitution and procedure for conducting the business of the Committee (Section 6). -(1) The State Government shall publish the names of the members of the Advisory Committee constituted under section 6 in the Official Gazette. For each such Committee, there shall be a Chairman-cum-Convener.

(2) The composition of the Committee shall be as under:-

(a)	**the Divisional Forest Officer of the concerned Division**	**…Chairman-cum-Convener**
(b)	**the representative of the Deputy Commissioner of the area**	**…Member**
(c)	**Two Pradhans of the Gram Panchayat of the area due for felling under the approved 10 years felling Programme formulate under section 4 of the Himachal Pradesh Land Preservation Act, 1978.**	**…Member**
(d)	**The representative of the Agent.**	**…Member**

(3) Every meeting of the Committee, shall be presided over by the Chairman-cum-Convener.

(4) The Chairman-cum-Convener shall fix the date, time and place of the meeting of the Committee and intimate the same in writing to all the members of the Committee.

(5) The Advisory Committee shall ordinarily hold its meeting at the headquarters of the Division for which it is constituted. Three members of the Committee shall constitute the quorum.

(6) The minutes of the proceeding shall be reduced to writing and the same shall be approved by the Chairman-cum-Convener. Such approval shall be taken as final and authentic proof of the Committee's recommendations.

(7) The Committee, having regard to the following facts, shall advise the State Government regarding the price at which the forest produce shall be purchased by the State Government or its Agent in each Division during teach financial year, namely:-

- **(a) the weighted average of last three years Government auctions of standing trees, if any, or rates charged in the Divisions concerned from the Himachal Pradesh State Forest Corporation Private Ld., in respect of Government lots;**
- **(b) the general trend of the market depending upon the latest auctions, if any;**
- **(c) the price variation to be allowed vis-à-vis the basic rate calculated on above factors, depending upon the proximity of the area to road side, quality and quantity of the forest produce being offered for sale; the mode and cost of transportation; the cost of extraction of forest produce, and**
- **(d) any other factors which the Committee may consider relevant.**

(8) A copy of the minutes of the meeting of the Committee shall be sent along with the advice to the Chief Conservator of Forests through the concerned Conservator of Forests of the Circle, who in turn shall forward the same to the State Government immediately.

6. Fixation of price by the State Government (section 7).- (1) The State Government, after consideration of the advice of the Committee, shall fix the price at which the forest produce shall be purchased at various places by it or by its agent from the owners of the forest produce.

(2) The price so fixed shall be published in the official Gazette and shall remain in force upon the end of each financial year.

It is evident from the combined reading of the H.P. Forest Produce (Regulation of Trade) Act, 1982 and the H.P. Forest Produce (Regulation of Trade) Rules, 1982 that the State Government has to from time to time constitute for each division in which the forest produce is grown or found an Advisory Committee which shall consist of not more than five members nominated by the State Government. It has to suggest the fair price for the forest produce. The Government has to fix the price in consultation with the Advisory Committee and as per first proviso to Section 7 if the Committee fails to tender advice by the 15th of February preceding the financial year, the State Government may proceed to fix the price without consultation of the Committee. Second proviso to Section 7 provides that the State Government through its authorised officer or agent may purchase the forest produce till the constitution of the Advisory Committee at a price mutually agreed upon between the parties to the sale.

There is no manner of doubt that the State has created a monopoly as far as regulating the trade of certain forest produce is concerned. Firstly the State has to make appointment of an agent. The State Government has appointed H.P. State Forest Corporation as its agent. The restrictions are imposed under section 4 and the duty is cast upon the State under section 5 to purchase all Forest produce offered for sale. There is a provision of constitution of a Advisory Committee which has to determine fair and reasonable price which is required to be paid to the owners.

The forest produce grown by the owners is a property as defined under Article 300-A of the Constitution of India. The Act i.e. the H.P. Forest Produce (Regulation of Trade) Act, 1982 is expropriatory legislation. The various provisions of the Act have to be construed strictly. If the owners are not paid fair and reasonable price, it will go against the very spirit of the Act. The wholesome principle for enacting the H.P. Forest Produce (Regulation of Trade) Act, 1982 is to regulate the trade of forest produce and simultaneously to pay fair and reasonable price to the growers.

The Court had directed the learned Advocate General on 27.7.2007 to apprise the Court whether any Advisory Committee was constituted or not in the division in question i.e. Jubbal. The supplementary affidavit on the affidavit of Conservator of Forest (Management) was filed in the Court. Para 3 of the supplementary affidavit read thus:-

> **"That advisory committee for Jubbal Forest Division was not constituted by the Govt. as the matter for abolishing the said Division was under active consideration at the time, to be merged in Rohru Forest Division. It is also submitted here that Jubbal Forest Division was abolished by the Govt. vide Notification No.FFE-A(A)1-3/98-pt. dated 21.12.1999 (Annexure-R-III). Advisory Committee for Rohru Forest Division had been duly notified on 24.11.1999 (Annexure-R-I)."**

It is apparent from the contents of the supplementary affidavit that Advisory Committee as per the provisions of the H.P. Forest Produce (Regulation of Trade) Act, 1982 was not constituted for the Jubbal Forest Division. It is evident from the language employed in Section 6 of the Act that the State Government has to constitute for each Division in which forest produce is grown, an Advisory

Committee comprising of not more than five members nominated by the State Government. The role assigned to the Advisory Committee is to suggest the State Government a fair and reasonable price at which forest produce offered for sale may be purchased by or on behalf of the State Government in that division. The State Government is required to fix the price in consultation with the Committee as per Section 7 of the Act. As per first proviso of Section 7 if the Committee fails to tender the advice by the 15th of February preceding the financial year, the State Government may proceed to fix the price without consultation of the Committee. In the present case, admittedly, the Advisory Committee was not at all constituted for the Jubbal Forest Division.

Second proviso to Section 7 provides that the State Government through its authorised officer or agent may purchase the forest produce till the constitution of the Committee or at a price mutually agreed upon between the parties to the sale. Since the Committee had not been constituted by the State at all for the Jubbal Forest Division, the case of the petitioners is covered under second proviso to Section 7 of the Act.

Mr. B.P. Sharma, the learned Senior Advocate submits that as per the past practice as and when the Advisory Committee had not been constituted as per Section 6 of the Act, the growers of the forest produce had been paid according to the system known as economic system, i.e. “sale linked price system”. I am in entire agreement with the submission made by Mr. B.P. Sharma in view of the language employed in second proviso to Section 7 of the Act. This Court on 3rd September, 2007 had directed the respondents to work out the details of the amount to which the petitioners are entitled as per the economic system. The supplementary affidavit to this

effect was filed by the Director (South) of the Himachal Pradesh State Forest Corporation. As per the details annexed with the affidavit, the gross sale was of Rs.26,88,037/- out of which a sum of Rs.10,61,799/- was deducted and the net income is Rs.16,26,328/- and the amount already paid in view of the notification of the Government to the petitioners was Rs.11,39,481/-. Consequently, as per the details worked out of private lot of felling No.4248 the petitioners were held entitled to further amount of Rs.4,86.757/-. The combined reading of the details suggests that a hefty amount of Rs.10,61,799/- has been deducted from the total gross sale of Rs.26,88,037/-. The deducted amount of Rs.10,61,799/- is disproportionate on the face of it and it could be at the most half of the amount i.e. Rs. 5,30,899.50 paisa. Consequently, the petitioners were atleast to be paid a sum of Rs.10,17,656.50/- over and above the amount which had already been released to the petitioners.

So far as the contention of the learned Advocate General and Mr. Rakesh Jaswal with regard to entering into an agreement with the Corporation on 5.11.2001 by the petitioners is concerned, suffice to observe that this agreement on the face of it is arbitrary, firstly on the ground that there is a reference to the notification dated 6.2.1991, which admittedly stood superseded by the notification dated 29.5.2001 and secondly, on the ground that there could not be any agreement against the public policy hit by Section 23 of the Indian Contract Act, 1872. The petitioners and the similarly situated persons are to be paid the fair and reasonable price for their forest produce in accordance with law. The detailed procedure has been provided for working out the modalities of fixing the price. The respondents have failed to fix the price in conformity with Sections 6

and 7 of the Act and in these circumstances; the case of the petitioner is covered under second proviso to Section 7 of the Act by invoking the 'sale linked price system'.

Their Lordships of the Hon'ble Supreme Court while construing the provisions of the Land Acquisition Act, 1894 in ***the State of Madhya Pradesh and others versus Vishnu Prasad Sharma and others*** AIR 1966 SC 1593 have held as under:

> **"It was said that the Government may have difficulty in making the plan of its project complete at a time, particularly where the project is large and, therefore, it is necessary that it should have power to make a number of declarations under S.6. I am wholly unable to accept this argument. First, I do not think that a supposed difficulty would provide any justification for accepting an interpretation of a statute against the ordinary meaning of the language used in it. General considerations of the kind suggested cannot authorize a departure from the plain meaning of words. Secondly, I cannot imagine a Government, which has vast resources, not being able to make a complete plan of its project at a time. Indeed, I think when a plan is made, it is a complete plan. I should suppose that before the Government starts acquisition proceedings by the issue of a notification under S. 4, it has made its plan for otherwise it cannot state in the notification, as it has to do, that the land is likely to be needed. Even if it had not then completed its plan, it would have enough time before the making of a declaration under S. 6 to do so. I think, therefore, that the difficulty of the Government, even if there is one, does not lead to the conclusion that the Act contemplates the making of a number of declarations under S. 6. I would like to observe here to avoid confusion that we are not concerned now with extension of a completely planned project conceived later. The present contention is not based on any difficulty arising out of such a case. It was said that if the Government has not finalized its plan when**

it makes a declaration under S. 6, it would have to start fresh acquisition proceedings beginning with a notification under S. 4 to provide for the complete plan if it could not make any more declarations and in such a case, in conceivable circumstances, it may have to pay more for the land that it then sought to acquire. This argument concedes that even if the Government has not been able to make its plan when making a declaration under S.6, the result is not that it cannot acquire any more land later when the plan is completed. The real point, therefore, of the present argument is that the Act should be so interpreted that the Government should not be put to extra cost when it has been unable to complete its plan at a time. This seems to me to be a strange argument. First, there is no reason why the Act should provide for the Government's failure to complete the plan. Secondly, the argument is hypothetical for one does not know for sure whether a later acquisition will cost more or less. Arguments on hypothetical considerations can have little weight in interpreting statutes. But even otherwise, this view of the matter does not support the argument. After the issue of a notification under S.4, an owner of land in the locality notified cannot have full beneficial enjoyment of his property; he cannot, for example, build on his land for if he does so and the land is acquired, he will get no compensation for the building put up and will lose the costs incurred for it. If it is a justification for saying that a number of declarations can be made under S.6 because otherwise the Government may have to pay more, it seems to me that it is at least an equal justification for saying that such declarations cannot have been contemplated by the Act because that would mean an avoidable deprivation of the owners of their beneficial enjoyment of lands till such time as the Government is able to make its plan. <u>As the Act is an expropriatory Act, that interpretation of it should be accepted which puts the least burden on the expropriated owner</u>. The Government could, of course, always make a complete plan at a time

and I am unable to hold that the Act contemplated that it need not do so and go on making declarations from time to time as its plan goes on taking shape even though the result might be to increase the hardship of persons whose lands are taken away."

Their Lordships of the Hon'ble Supreme Court have held in ***Khub Chand and others versus State of Rajasthan and others, AIR 1967 1074*** as under:

"This argument was not accepted by the High Court, and, in our view, rightly. <u>The provisions of a statute conferring power on the Government to compulsorily acquire lands shall be strictly construed</u>. Section 4 in clear terms says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The provision is mandatory in terms. Doubtless, under certain circumstances, the expression "shall" is construed as "may". The term "shall" in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations,. The object underlying the said direction in S. 4 is obvious. Under sub-s. (2) of S. 4 of the Act, after such a notice was given, the officer authorized by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The Legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have a clear notice of the intended entry. The fact that the owner

may have notice of the particulars of the intended acquisition under S.5 (2) does not serve the purpose of S. 4, for such a notice shall be given after the appropriate officer or officers enter the land and submit the particulars mentioned in S.4. The objects of the two sections are different: the object of one section is to give intimation to the person whose land is sought to be acquired, of the intention of the officer to enter his land before he does so and that of the other is to enable him to know the particulars of the land which is sought to be acquired. In the Land Acquisition Act, 1894 (Central Act 1 of 1894) there is no section corresponding to S. 5 (2) of the Act. Indeed sub-s. (2) of S.5 of the Act was omitted by Act 15 of 1960 and S. 5A was suitably amended to bring the said provision in conformity with those of Central Act 1 of 1894. Whatever may be said on the question of construction after the said amendment-on which we do not express any opinion-before the amendment, Ss. 4 and 5 (2) were intended to serve different purposes.

Their Lordships of the Hon'ble Supreme Court in ***Collector of Central Excise, Ahmedabad versus Orient Fabrics (P) Ltd***. (2004) 1 SCC 597 have held as under:

"It is now a well settled principle of law that expropriatory legislation must be strictly construed (see DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana). It is further trite that a penal statute must receive strict construction."

Their Lordships of the Hon'ble Supreme Court in ***Hindustan Petroleum Corpn. Ltd. versus Darius Shapur Chenai and others***, (2005) 7 SCC 627 have held as under:

"It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind as regard consideration of relevant factors and rejection of

irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right."

The Act is an expropriatory legislation. This Court in State of Madhya Pradesh and Ors. Vs. Vishnu Prasad Sharma and Ors. [1966 (3) SCR 557] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand and Ors. Vs. State of Rajasthan and Ors., 1967 (1) SCR 120 and Collector of Central Excise, Ahmedabad vs. Orient Fabrics (P) Ltd., (2004) 1 SCC 597].

Their Lordships of the Hon'ble Supreme Court in ***Bharat Petroleum Corporation Ltd. versus Maddula Ratnavalli and others***, (2007) 6 SCC 81 have held as under:

"Right of property although is not a fundamental right, nonetheless remains a constitutional right and any expropriatory legislation must be construed strictly. [See Hindustan Petroleum Corporation Ltd. v. Darius Shahpur Chennai & Ors. [(2005) 7 SCC 627]].

Their Lordships of the Hon'ble Supreme Court in ***Bharat Petroleum Corporation Ltd. versus Maddula Ratnavalli and others*** quoted supra have held that the statute, however, must be construed justly. An unjust law is no law at all (*lex injusta non est lex*).

Now, the Court has to consider whether the representation made by the petitioners to the Principal Secretary (Forest) pursuant to the order of this Court has been decided in accordance with law or not. The Principal Secretary (Forest) had not decided the

representation strictly in accordance with law. The Principal Secretary has failed to take into consideration that the notification dated 6.2.2001 stood superseded by the subsequent notification dated 29.5.2001. The Principal Secretary has also committed serious illegality even while reading the bare contents of the notification dated 6.2.2001 and 29.5.2001 which has further rendered his decision bad in law.

The valuation of the trees for the purpose of payment of fair and reasonable price is complex exercise. It is to be done by experts. While determining the fair price, the State or the State Forest Corporation cannot take recourse to action which is arbitrary, unscientific or haphazard in nature as is evident in the present case. The owners of the trees cannot be left high and dry by arbitrary decisions of the State functionaries. In a democratic set up the citizens are supreme and all the authorities are required to function for the public welfare. The owners cannot sell their forest produce in the open market and as per provisions of the Act they have either to sell their forest produce to the State Government or to its agent. This situation cannot be permitted to be exploited by the respondent-State and its functionaries, including its agent appointed under the Act. The respondents while giving the details under the economic system have not spelt out the data on the basis of which hefty deductions have been made and the owners have been paid only half of the amount, to which they are legally entitled.

The up-shot of the above discussion is that:

i) **the State has failed to constitute any Advisory Committee for Jubbal Forest Division as per the provisions of the H.P. Forest Produce (Regulation of Trade) Act, 1982;**

ii) the notification dated 6.2.2001 stood superseded by the notification dated 29.5.2001;

iii) the notification dated 6.2.2001 could not be reflected in the agreement dated 5.11.2001 once it stood superseded by the notification dated 29.5.2001;

iv) since no Advisory Committee had been constituted for Jubbal Forest Division, the petitioners are entitled to get the price of their forest produce as per the economic system, the detail of which had been furnished by respondent No.3 alongwith the affidavit dated 24th September, 2007;

v) the petitioners are held entitled to an additional sum of Rs.10,17,656/- over and above the amount which had already been paid to them; and

vi) the petitioners are held entitled to interest at the rate of 9% per annum on the additional amount which is to be paid by the respondent No.3 within a period of four weeks from today.

Consequently, this writ petition is allowed. The Annexure P-7 dated 27.2.2003 is quashed and set aside. The petitioners are held entitled to a sum of Rs. 10,17,656.50/- with interest @ 9% per annum over and above the amount which had already been paid to them. No order as to costs.

December 3, 2007. **(Rajiv Sharma),**
(sck) **Judge.**